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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,396	02/26/2002	Kenichi Miyoshi	L9289.02123	3615
24257	7590	02/24/2005	EXAMINER	
STEVENS DAVIS MILLER & MOSHER, LLP			TRAN, TUAN A	
1615 L STREET, NW			ART UNIT	
SUITE 850			PAPER NUMBER	
WASHINGTON, DC 20036			2682	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/069,396	MIYOSHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tuan A Tran	2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 10-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Scherzer (6,347,234).

Regarding claims 10-13, Scherzer discloses a radio base station apparatus (See fig. 1) comprising: a fading correlation monitoring means 105 that monitors a fading correlation among the received radio waves received from a plurality of antenna elements (See fig. 1 and col. 6 line 39 to col. 8 line 38); a radio transmitting receiving

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means 109, 101, based on the fading correlation monitored by the fading correlation monitoring means 105, carried out signals radio transmission reception while switching (by transmission/reception method selector 106, 120) between directive transmission reception in which signals are formed with a certain directivity and transmitted received thereby, and diversity transmission reception by which signals from a plurality of branches are combined or selected and transmitted and received thereby, wherein the radio transmitting receiving means 109, 101 transmits/receives the signals using the directive transmission/reception when the fading correlation monitored is higher than a predetermined threshold and using the diversity transmission/reception when the fading correlation monitored is lower than the predetermined threshold; and inherently a demodulator that demodulates signals from the radio transmitting receiving means (See fig. 1 and col. 6 line 39 to col. 8 line 38, col. 10 line 54 to col. 11 line 16, col. 14 line 20 to col. 16 line 22).

Claims 17-18 are rejected for the same reasons as set forth in claims 10 and 12, as method.

Regarding claim 14, Scherzer discloses as cited in claim 12. Scherzer further discloses the radio transmitting means makes the transmitting power consumed by diversity transmission lower than the transmitting power consumed by directive transmission (See col. 11 lines 4-15, col. 15 lines 52 to col. 16 line 7).

Regarding claims 15-16, Scherzer discloses as cited in claim 10. Scherzer further discloses the correlation monitoring means estimates the angle spread of a received signal from a communication partner and monitors the fading correlation

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referring to the estimated angle spread or calculates a fading correlation value and monitors the fading correlation referring to the calculated fading correlation value (See col. 7 lines 60 to col. 8 line 11, col. 15 lines 39-67).

### ***Response to Arguments***

Applicant's arguments filed 11/29/2004 have been fully considered but they are not persuasive.

a. The Applicant argued that Scherzer fails to disclose a transmission/reception method selector that switches between directional transmission/reception and diversity transmission/reception (See Remark, page 7 last paragraph to page 8 first paragraph). The Examiner respectfully disagrees with the Applicant argument because Scherzer does disclose the switching between directional transmission/reception and diversity transmission/reception being carried by the transmission/reception method selector 106, 120 (See above rejection for details). For that reasons, the Examiner maintains the same rejections for all the pending claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan Tran** whose telephone number is **(703) 605-4255**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vivian Chin**, can be reached at **(703) 308-6739**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

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Tuan Tran

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SUPERVISORY PATENT EXAMINER  
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2/22/05